

Sample Conservation Easement Language

As natural-resource agencies in Virginia consider how best to protect the types of land that are important to each agency's mission, they are expanding their repertoire of conservation methods to include more than traditional ownership in fee simple. Agencies within the Secretariat of Natural Resources and the Secretariat of Agriculture and Forestry are increasingly turning to conservation easements as one of the tools they can use to achieve their land-conservation goals.

The first, vital steps in writing a conservation easement are to accurately identify the conservation purposes of the property by ascertaining the known resources of all kinds that are present on the site, and to find a way to combine those conservation purposes with the desires of the landowner who is granting the easement. Since the property's resources will define the conservation purpose of the easement, they should generally reflect the mission and focus of the agency that is working with the landowner to protect the land. However, important natural and cultural resources often exist on the land that go beyond the focus of the agency that will hold the conservation easement. The purpose of gathering examples of sample language that can be included in conservation easement documents is to provide Virginia's land-conservation agencies with conservation-easement language to protect resources that are not usually within the purview of that agency. Conceivably, other organizations may find these to be useful examples for crafting protective conservation easement language as well.

The language used in conservation easements is crucial to establish long-term protection of the property and the continuation of those uses and attributes that represent the land's conservation values. These documents must be crafted carefully and unambiguously to ensure rock-solid land conservation in perpetuity. These examples are presented with that in mind, in order to further land conservation in Virginia.

The first type of sample language presented is suggested provisions for conservation easements where the donation of the easement will produce land preservation tax credits of \$1 million or more. All the other sample language types are presented with two kinds of "modules" that correspond to the usual sections of a conservation easement. In each section, examples of conservation purpose language are provided first as recitals beginning with "Whereas," and then examples of protective language are provided that can be used to protect the conservation purposes recited in the "Whereas" clauses.

The craft of conservation easement writing is always evolving, and the intent for this document is to keep it alive by continuing to revise it with new samples of language that will serve to protect the land and landmarks of Virginia.

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SUGGESTED CONSERVATION EASEMENT PROVISIONS

*To Satisfy the Public Benefit and General Water Quality and Forest Management Requirements of the
Land Preservation Tax Credit Conservation Value Review Criteria*

Pursuant to the Virginia Land Conservation Foundation criteria (VLCF Criteria) for the Land Preservation Tax Credit adopted as a requirement of Virginia Code § 58.1-512(D)(3)(a) on November 21, 2006 “[t]he terms of every deed of conservation easement submitted for DCR review must contain terms and restrictions that protect the conservation purpose(s) of the land in perpetuity.” The following Conservation Easement¹ restrictions are intended to meet the requirements of the Public Benefit and General Water Quality and Forest Management sections of the VLCF Criteria. In addition to these restrictions, deeds of Conservation easement should contain recitals that adequately describe the conservation value of the land subject to the Conservation Easement and a clear statement of conservation purpose.

Public Benefit

VLCF Criteria § (B)(3)(a) *Subdivision* “limitations on the number of permitted subdivisions on the property;”

(a) *Subdivision.* The Property shall not be divided, subdivided or partitioned, nor conveyed or pledged for a debt except in its current configuration as an entity.

– or –

(a) *Subdivision.* Grantor may subdivide the Property, at Grantor’s option, into no more than [number (#)] parcels. The Property shall not be further divided or subdivided. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered a prohibited division of the Property, provided that any portion of the Property so conveyed shall remain subject to the terms of this Conservation Easement, and further provided that Grantee is notified in writing prior to the completion of any such boundary line adjustment and at least one of the following conditions is met:

- (i) The entire adjacent parcel is subject to an existing, recorded conservation easement held by Grantee; or
- (ii) The proposed boundary line adjustment is reviewed and approved in advance by the Grantee.

¹ A conservation easement is “A legal agreement between a landowner and a qualified organization that restricts future activities on the land to protect its conservation values.” (The Conservation Easement Handbook; 2nd Ed.; pg. 532; Byers, Elizabeth and Pont, Karin Marchetti; Land Trust Alliance, Washington, D.C.; 2005) Within the VLCF Criteria and this website a conservation easement refers to both conservation easements taken by private conservation organizations under Va. Code § 10.1- 1009 *et. seq.* and open space easements taken by public bodies authorized under Va. Code § 10.1-1700 *et. seq.*

VLCF Criteria §§ (B)(3)(b)-(d) Buildings and Roads

(a) *Improvements*. No Improvements may be constructed, maintained, or permitted on the Property except as provided herein:

- (i) *Limitation on Improvements*.² The collective Footprint of all Improvements on the Property shall not exceed [number (#)] square feet.
- (ii) *Improvements in Building Envelopes*.³ The Grantor is permitted to construct and maintain Improvements within the Building Envelopes subject to **Paragraph 3.1(b)(i) {Limitation on Improvements}** without the prior consent of the Grantee. In addition, all Residences shall be located within Building Envelopes.
- (iii) *Improvements Outside Building Envelopes*.^{2, 3} The Grantor may construct and maintain Improvements outside the Building Envelope only with the prior written consent of the Grantee. Any and all Improvements permitted under this paragraph shall count against the absolute footprint limit on Improvements as outlined in Paragraph 3.1(b)(i) **{Limitation on Improvements}**.
- (iv) *Roads, Trails, and Utilities*.⁴ The Grantor may construct Roads, associated culverts, and underground and above-ground utility lines necessary to accommodate permitted Improvements on the Property. Roads shall be no more than twelve (12) feet in width, and an area of no more than thirty (30) feet in width may be cleared of natural vegetation in the construction of Roads. Furthermore, Roads shall be open section roads (shoulder and ditch design) and drainage ditches shall be vegetated open channels as opposed to concrete or other impervious materials. Land cleared in the construction of the Road (excluding the road itself) shall be re-forested or re-vegetated as soon as possible following construction. In addition, Grantor shall have the right to construct Trails on

² This restriction , in conjunction with the other restrictions in this subsection, is intended to meet the requirement of VLCF Criteria §(B)(3)(b) “limitations on the amount of permitted new buildings and structures, either by placing a limit on the number of new buildings or structures and placing individual limits on the size of those buildings or structures, or by placing a limit on the collective footprint of all buildings and structures; or by some combination of those approaches;”

³ This restriction , in conjunction with the other restrictions in this subsection, is intended to meet the requirement of VLCF Criteria §(B)(3)(c) “restrictions on the location of permitted new buildings and structures, either through the use of building envelopes, no-build zones, or through required review and approval by the easement holder of the location of new buildings and structures prior to construction;”

⁴ This restriction , in conjunction with the other restrictions in this subsection, is intended to meet the requirement of VLCF Criteria §(B)(3)(d) “restrictions on the location of permitted new roads or access ways, either through use of pre-approved routes, no-road zones, or through required review and approval by the easement holder of new roads or access ways prior to construction (however, roads or access ways for public safety needs or for permitted uses such as farming or forestry may be constructed and maintained);”

the Property of reasonable extent to provide non-motorized access to areas of the Property and/or to accommodate recreational activities. Trails shall be no more than four (4) feet in width and shall be either unimproved paths or shall be constructed of permeable materials.

VLCF Criteria §§ (B)(3)(e) *Natural Heritage Resources and Cultural Resources* “limitations on alterations, demolition, or ground-disturbing activity that may impact cultural or natural heritage resources.”⁵

(a) *Natural Heritage Resources.* There shall be no alterations, demolition, or ground-disturbing activity outside of the building envelope shown in “Exhibit []” that would threaten the integrity of the Natural Heritage Resource values present on the land at this time or found on the land in the future. [*Define Natural Heritage Resources and list which Natural Heritage Resources are present in the recitals.*]

There are two suggested restrictions where Cultural Resources are present on the land in question. A decision on which restriction to use should be based on the location and nature of the resource.

(b) *Cultural Resources.* The [*house*] shall not be demolished or removed from the Easement Property, nor shall it be altered, restored, renovated, or extended, except in a way that would, in the opinion of the Grantee, be in keeping with the historic character of the Easement Property, and provided that the prior written approval of the Grantee to such actions shall have been obtained. The preceding condition shall apply to interior, if appropriate, and exterior changes. No other building or structure shall be constructed, altered, restored, renovated, or extended, except in a way that would, in the opinion of the Grantee, be in keeping with the historic character of the Easement Property, and provided that the prior written approval of the Grantee to such actions shall have been obtained. The location and design of any new building or structure is expressly made subject to the prior written approval of the Grantee.

– or –

(b) *Cultural Resources.* There shall be no alterations, demolition, or ground-disturbing activity outside of the building envelope shown in “Exhibit []” that would threaten the integrity of these Cultural Resource values, without the prior written approval of the Grantee to such

⁵The following restrictions are intended to meet the requirements of conservation easements given where Natural Heritage Resources and Cultural Resources are merely present on the conserved land. These restrictions are not intended to be sample easement language where the protection of Natural Heritage Resource or Cultural Resource are the sole or even primary purpose of the conservation easement. Please contact the Virginia Department of Conservation’s Division of Natural Heritage or Virginia’s Department of Historic Resources for more information on easements with a more intense focus on Natural Heritage or Cultural Resources.

actions having been obtained. [*Define Cultural Resources and list which Cultural Resources are present in the recitals.*]

General Water Quality and Forest Management

VLCF Criteria § C (1) Riparian Buffer. “Conservation easement terms must require a riparian vegetated buffer ... that is at least 35 feet wide, unless a wider buffer is required by local, state, or federal law or regulations.”

(a) *Riparian Buffer Area.* In order to protect the ecological integrity and water quality of the water resources, Grantors agree to maintain a vegetated Riparian Buffer which shall contain the land extending [*at least 35*] feet from the bank of the wetland, perennial stream, river, sinking stream, lake, tidal water and water bodies on or adjacent to the Property, (mean high water in tidal environments); and additional designated areas of the Property with special conservation significance. The extent and location of Buffer Areas are shown on Map __ in Exhibit B and are described and depicted graphically in the Baseline Report.

(i) *Improvements in the Riparian Buffer Area.* Construction of new buildings or structures and roads is prohibited within the buffer. However, existing buildings or structures, archaeological investigations, reconstruction of documented historic buildings and structures on historic properties, and certain water-dependent structures such as docks are permissible, as are existing roads.

(v) *Stream Crossings and Access Points.* Limited stream crossings and access points are allowed, as shown on Map__ in Exhibit__.

(vi) *Soil Disturbance.* Plowing or other soil disturbance is prohibited within the buffer. However, tree planting, forest management in accordance with Virginia’s Forestry Best Management Practices for Water Quality Guide, archaeological investigations and restoration, and maintenance of documented historic landscapes on historic properties are permissible.

(iii) *Vegetative Cover.* Grantor agrees that the Riparian Buffer Area shall be maintained with Vegetative Cover including forest, shrubs, or warm season grasses. **Mowed lawns or mowed or grazed pastures shall not constitute vegetative cover for the purposes of this provision.** However, documented historic landscapes involving mowed lawns or pastures on historic properties may be restored or reconstructed and maintained, and control of non-native vegetation or removal of diseased trees is permissible.

(iv) *Livestock Grazing*. Livestock grazing is prohibited in the Riparian Buffer Area. This does not prohibit the limited stream crossings and access points allowed in paragraph (ii) above.

VLCF Criteria § C(2) *Land Used for Agricultural Production*. “If the property contains lands in agricultural use, ... then the deed of conservation easement shall require implementation of a written conservation plan that stipulates the use of best management practices...”

(a) *Agricultural Production*⁶. Whenever the land is used in Agricultural Production, it shall be done in accordance with a written conservation plan that stipulates the use of Best Management Practices. This plan shall be developed in consultation with the local Soil and Water Conservation District or the Natural Resources Conservation Service representative.

VLCF Criteria § C(3) *Management Plans for Forestlands*. “If the property contains 20 acres or more of forest lands, ... then the deed of conservation easement shall require that the landowner has a current written forest management plan or Virginia Forest Stewardship Plan in place prior to the commencement of timber harvesting or other significant forest management activities.”

(a) *Forestland Management*. Prior to the commencement of timber harvesting or other significant forest management activities the landowner shall ensure there is a current written forest management plan or Virginia Forest Stewardship Plan in place. The forest management plan shall include a provision that all forest management and harvesting activities be developed by, or in consultation with, the Virginia Department of Forestry, or be consistent with Virginia’s Forestry Best Management Practices for Water Quality Guide. All timber harvesting or other significant forest management activities shall be conducted in accordance with this current forest management plan.

⁶ The deed must define Agricultural Production as “Production for sale of plants or animals under standards prescribed by the Commissioner of Agriculture and Consumer Services, or land devoted to a soil conservation program under an agreement with an agency of the federal government.”

Sample Language for Agricultural Resources

Conservation Purpose Language

WHEREAS, the Property possesses unique [*farming and/ or grazing*] resources (collectively “Agricultural Resources”) and [*open space, scenic, wetlands, natural habitat and/ or historic*] values (collectively “Conservation Values”) of great importance to Grantor, the people of _____ County and the people of the State of Virginia; and

WHEREAS, the Property has a long history of agricultural operations, contains significant areas with soil classifications designated as [*insert*] and has been identified by the Natural Resource Conservation Service of the United States Department of Agriculture as farmland of statewide and local importance in accordance with the classification standards of that agency; and

WHEREAS, the Property further possesses outstanding Conservation Values and consists in part of [*insert description of open space, scenic, wetlands, natural habitat and/ or historic values*], the preservation and management of which is consistent with the present and continued use of the Property for agricultural production and open space purposes; and

WHEREAS, Grantor intends that the Property be maintained in agricultural production and that the Conservation Values of the Property be preserved by the continuation of the agricultural uses that have proven historically compatible with such values; and

WHEREAS, the County of _____ has established policies and zoning ordinances to help preserve that County’s productive agricultural lands; and

WHEREAS, Grantor intends, as the owner of the Property, to convey to Grantee the right to preserve and protect the Agricultural Resources and Conservation Values of the Property in perpetuity; and

WHEREAS, the Grantee agrees, by acceptance of this Easement, to honor the intentions of Grantor stated herein to preserve and protect in perpetuity the Agricultural Resources and Conservation Values of the Property for the benefit of this generation and future generations to come; and

WHEREAS, the Grantor grants this Easement for valuable consideration to Grantee for the purpose of assuring that, under the Steward’s perpetual stewardship, the agricultural productive capacity and open space character of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current agricultural use of, and improvements to, the Property are consistent with the conservation purposes of this Easement.

Protective Language

Agriculture. Grantor shall have the right, for commercial purposes or otherwise, to engage in agricultural activities in Agricultural Areas and/or within Building Envelopes. Agricultural activities shall include the right to:

1. breed, raise, keep and pasture livestock;
2. breed and raise bees, poultry and other fowl;
3. plant, raise and harvest crops;
4. perform primary processing and storage of crops and products harvested and produced principally on the Property;
5. board and keep horses for use by Grantee and others;
6. lease portions of the property to others engaging in an approved agricultural use;
7. engage in silvicultural practices;
8. extract surface and subsurface water necessary to accommodate permitted agricultural activities;

– OR –

Agriculture. Grantor shall have the right, for commercial purposes or otherwise, to engage in agricultural activities in Agricultural Areas and/or within Building Envelopes. Agricultural activities shall include the right to:

1. harvest, plant, cultivate, and otherwise manage timber for domestic purposes, subject to the provisions of paragraph ___;
2. conduct farming and agricultural activities (as such activities are defined in paragraph ___ below) for domestic or commercial purposes, subject to the provisions of paragraph ___;
3. engage in any domestic, non-commercial, outdoor recreational activities that are not disruptive of the natural environment and are not inconsistent with the purpose of this Easement;
4. compost, burn, or store vegetative waste generated by permitted activities and uses and the right to store for removal at reasonable intervals normal and customary waste generated on the Protected Property by permitted activities and uses;
5. post all or a portion of the Protected Property against trespassing, fishing and hunting.

– OR –

AGRICULTURAL USE. Grantor shall have the right, for commercial purposes or otherwise, to continue agricultural use as defined. For purposes of this Easement, “agricultural use” means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including the breeding and grazing of cattle, swine, captive cervidae, equines and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables;

aquaculture, Christmas trees; and other similar uses and activities. The management and harvesting of a woodlot is not considered an agricultural use.

– *OR* –

RURAL ENTERPRISES: Grantor shall retain the right to conduct rural enterprises consistent with the Purposes of this Conservation Easement, especially the economically viable use of the Property for agriculture, forestry and open space, and the conservation of agriculturally and silviculturally productive land. In connection with such rural enterprises, Grantor retains the right to maintain, repair, enlarge, replace and use permitted structures with associated utility services, drives and appurtenant improvements within the two designated Building Areas, which are described more particularly in Exhibit __, Baseline Documentation. Grantees may approve a new, non-residential, non-agricultural structure for an approved rural enterprise only if an existing structure is not suitable, as determined by agreement between Grantor and Grantees, and the new structure is:

1. located within Building Area 1 or Building Area 2;
2. smaller than 1500 square feet as an exterior measure of the footprint and no more than 25 feet from the lowest undisturbed ground level to the roof peak;
3. inclusive of all storage space so that no part of the business is conducted outside of the structure;
4. of a nature, intensity, scope, size, appearance, type and quantity compatible with the existing agricultural structures;
5. located in a way that minimizes negative impact on future operations and expansion of agricultural uses, does not interfere with current agricultural operations and does not displace farm or forestry storage, use or functions;
6. non-residential; and
7. consistent with the Purposes of the Conservation Easement.

No use or structure contemplated under this Section shall be commenced, constructed or located without first securing the prior written approval of Grantees, which approval Grantees may deny or condition in their sole discretion. All structures and uses shall conform with all applicable local, state and federal ordinances, statutes and regulations. Grantees' approval may be conditioned upon, without limitation, receipt of copies of any necessary governmental permits and approvals that Grantors obtain for such use or construction. Grantees shall not approve a new structure for a non-agricultural, approved rural enterprise unless the proposed structure meets factors (1) through (7), above.

USES AND ACTIVITIES. No use or activity, including any such use or activity expressly authorized herein, shall destroy an identified conservation purpose of this Easement. The following

acts or uses are expressly forbidden on, over, or under the Protected Property, except as provided in paragraphs ___ and ___:

1. Subdivision, division, or de facto subdivision of any portion of the Protected Property into more than one ownership;
2. Mining, excavating, dredging, or removing from the Protected Property of soil, loam, peat, gravel, sand, hydrocarbons, rock, or other mineral resource or natural deposit;
3. Commercial or industrial uses of the Protected Property, provided, however, that the following uses are not deemed to be commercial or industrial uses for the purposes of this Easement and are specifically permitted:
 - a. *De minimis* commercial recreational activities.
 - b. Agricultural uses including, but not limited to, establishing, reestablishing, maintaining or using cultivated fields, orchards, or pastures (including clearing woodland areas for conversion to crop or pastureland) in accordance with generally accepted agricultural practices, including horticultural specialties; livestock, including all domestic and domesticated animals; and livestock products. The processing of agricultural products is not an agricultural use, except as an accessory use.
 - c. Management of forest resources shall be in accordance with a Forest Stewardship Management Plan prepared by the Virginia Department of Forestry. Forestal uses including, but not limited, reforestation, site preparation, timber harvesting, and other commercial forest management activities are permitted provided that they adhere to established Best Management Practice, meet the requirements established for Riparian Forest Buffers, and follow sustained yield principles to maintain and improve the long-term health and productivity of the forest. The Grantor, or its successors or assigns, shall notify the Grantee thirty (30) days before the anticipated start of any harvesting activity and seven (7) days before the anticipated completion of such harvesting activity.
 - d. Temporary or seasonal activities that do not permanently alter the physical appearance of the Property and are otherwise consistent with this Easement including, but not limited to, the sale of agricultural products grown or raised on the Property, and the granting of licenses to enter and use the Property for hunting or fishing.
 - e. Activities that can be and are conducted within permitted buildings without material alteration to the external appearance thereof.

- f. Uses subordinate and customarily incidental to a principal use of the Property that are not expressly prohibited by and are otherwise consistent with this Easement.
 - g. Uses or activities not expressly excepted herein, but which are determined by Grantee in writing not to be a commercial or industrial use and to be consistent with this Easement. In making this determination, Grantee may consider, among other things, whether the cope of a use or activity excepted herein has evolved over time as a result of changes in the law or customary practices.
4. Display of billboards, signs or advertisements is prohibited on or over the Property, except: (1) to state solely the name and/or address of the Property and/or the owners; (2) to advertise the sale or lease of the Property; (3) to advertise the Agricultural uses of the Property; (4) to advertise the sale of goods or services produced by permitted uses of the Property;
 5. Dumping or placement of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery and other materials on the Property is prohibited, except that soil, rock, other earth materials, vegetative matter or compost may be placed (1) as may be reasonably necessary for agricultural purposes on the Property, or (2) as may be reasonably necessary for access to, and construction and/or maintenance of, structures permitted under this Conservation Easement.

NO PUBLIC RIGHT OF ACCESS TO PROPERTY. This Deed of Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Property or any portion thereof, except as Grantor may otherwise allow in a manner consistent with the terms of this Deed of Easement.

FORESTRY. Grantor retains the right to conduct forestry activities for domestic purposes. Domestic forestry includes the cutting of firewood (only for heating of residences and other structures on the property), blowdowns, dead and diseased trees and trees that pose threats to persons or property. Commercial forestry activities shall be prohibited.

MANAGEMENT. The Property shall be managed in compliance with a Farm Conservation Plan or Forest Stewardship Plan approved by the Grantee and designed to protect and preserve the overall health of the agricultural resource and to protect, improve, preserve, and enhance water quality and wildlife habitat. “Farm Conservation Plan” and “Forest Stewardship Plan” refer to the currently accepted conservation planning documents generated by professional natural resource managers and shall include future conservation planning documents generated by professional natural resource managers, regardless of nomenclature. Grantor and Grantee recognize that changes in economic conditions, in technologies, and in accepted farm and forest management practices may result in an evolution of land practices related to the Property, and agree that such practices may change over time but shall remain consistent with the purpose of this Easement.

BUILDINGS AND STRUCTURES. Notwithstanding any other provision, no permanent or temporary building or structure shall be built, placed or maintained on the Property except as provided below and provided that the total of all impervious surfaces, including those provided for in Article ___, ___, and ___, shall not exceed two percent (2%) of the Property. Impervious surfaces include, without limitation, the footprint of all existing and future buildings, structures and/or improvements, roofs, paved parking and road areas, and concrete pads. Structure footprints shall be measured along the outermost perimeter of such structures, at ground level or above, include any attached or associated decks, steps, porches or other enclosed or open-air attachments.

- 1) Existing agricultural and residential structure and improvements, consisting of a farmhouse, and farm buildings, shown within **Building Area 1**, which is identified more particularly in Exhibit ___, may be repaired, replaced, or reasonably enlarged at their current locations, but shall not exceed the limits of Building Area 1 as it is described in Exhibit ___, and no increase in size of any permitted structures shall result in total impervious surfaces exceeding two percent (2%) of the Property without written permission from the Grantees;
- 2) New farm buildings and other structures and improvements to be used for agricultural purposes, may be built on the Property within **Building Area 1**. One (1) additional agricultural building for agricultural purposes may be built outside of **Building Area 1** provided that such structure does not exceed 2,000 square feet and is not located on prime or unique soils;
- 3) The existing structure known as the “Tenant House” is contained within the limits of **Building Area 2**, which is described more particularly in Exhibit ___; such structure may be repaired, replaced, or reasonably enlarged at its current location but shall not exceed the limits of **Building Area 2** and no increase in size of any permitted structures shall result in total impervious surfaces exceeding two percent (2%) of the Property without written permission from the Grantees;
- 4) Non-residential outbuildings and structures commonly and appropriately incidental to the permitted dwellings, such as a garden shed or woodshed provided that they are located completely within the **Building Area 1** or **Building Area 2**, identified in Exhibit ___;
- 5) Existing fences may be repaired and replaced, or removed and new fences may be built on the Property for purposes of reasonable and customary management of livestock and wildlife.

ROADS. Construction or maintenance of unpaved farm roads for necessary improvements and uses permitted on the Property are allowed, provided the construction of new roads outside Building Area 1 and Building Area 2 are limited to agricultural uses. Other than roads and yard areas indicated within Building Area 1 and Building Area 2, no portion of the Property shall be paved or otherwise covered with concrete, asphalt, or any other impervious surface material, unless approved in writing by Grantees as being consistent with the purposes of the Conservation Easement and such activity falls within the impervious surface limit as articulated in Article ___ of this Conservation Easement.

GRANTING SUBSEQUENT EASEMENTS, INTERESTS IN LAND, OR USE

RESTRICTIONS. The grant of any subsequent easements, interests in land, or use restrictions that might diminish or impair the agricultural productive capacity or open space character of the Property is prohibited. Grantor may grant subsequent easements, including conservation easements, interests in land, or use restrictions on the Property provided that they do not restrict agricultural husbandry practices or interfere with any of the terms of this Easement, as determined by Grantee. “Husbandry practices” means agricultural activities conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality. Grantee’s written approval shall be obtained at least thirty (30) days in advance of the Grantor’s execution of any proposed subsequent easement, interests in land, or use restriction on the Property, and such subsequent easements, interests in land, and use restrictions shall make reference to and be subordinate to this Easement. Grantee shall disapprove the granting of any proposed subsequent easement, interest in land, or use restriction that appears to restrict agricultural husbandry practices, or diminishes or impairs the agricultural productive capacity or open space character of the Property.

Sample Language for Forest Resources

PRESERVED FORESTS

Conservation Purpose Language

WHEREAS, the purpose of this Easement is to protect or assure in perpetuity that the forests on this Property will run with the described property for the purposes of continuous and positive impacts on air and water quality, wildlife habitat, educational, scientific, and private recreational activities that retains and enhances quality habitat and biodiversity; and

WHEREAS, the Grantor shall maintain with the Grantee a Forest Stewardship Plan or multiple resource management plan (“The Plan”) prepared by a professional forester and approved by the Grantee, to assure the purposes of the Easement as set forth above; and

WHEREAS, The Plan will include integrated recommendations for sustainable management of multiple resources, will incorporate the protective language found in Section __, will be created or reviewed and updated at the commencement of this easement and every five to ten years thereafter; and shall be a guiding document for the continued management of the forest resources on the property;

Protective Language Options

FOREST MANAGEMENT FOR HEALTH AND SCENIC RESOURCES: Management of forest resources shall be in accordance with a forest stewardship plan or multiple resource management plan (“The Plan”) approved by the Grantee. The Plan will emphasize maintaining an undisturbed site free of all logging activity in order to maintain the ecological health and scenic beauty of the woodland. Tree removal may be allowed to control insect and disease infestations, to prevent personal injury and property damage, to remove or reduce the spread of invasive species, to promote regeneration of native tree species, to improve wildlife habitat, and to utilize dead, dying and fallen timber for domestic consumption as firewood or use in the construction of permitted improvements and fences on the Property. All forestry activities shall be carried out so as to preserve the environmental qualities of the area. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material forestry activity is undertaken. The Grantor shall notify the Grantee no later than 30 days prior to the anticipated start of any forest activity as well as 7 days prior to its anticipated completion.

FOREST MANAGEMENT FOR FOREST COMPOSITION: Management of forest resources shall be in accordance with a forest stewardship plan or multiple resource management plan (“The

Plan”) approved by the Grantee. The principal objectives of this Plan shall be to maintain an ecologically sustainable, productive and diverse forestland by maintaining a largely natural, undisturbed site. Timber harvesting may be permitted provided that it promotes the development of a forest stand of native plant species and species composition that is likely to occur on the site as a result of natural biological and physiological processes. Tree removal may be allowed to control insect and disease infestations, to prevent personal injury and property damage, to remove or reduce the spread of invasive species, to promote regeneration of native tree species, to improve wildlife habitat, and to utilize dead, dying and fallen timber for domestic consumption as firewood or use in the construction of permitted improvements and fences on the Property. During all harvesting activity, Best Management Practices, as defined by the Department of Forestry, shall be used to control erosion and protect water quality. The Grantor, , shall notify the Grantee 30 days before the anticipated start of any harvesting activity and 7 days prior to the anticipated completion of such harvesting activity.

RIPARIAN BUFFER. Management of forest resources shall be in accordance with a forest stewardship plan or multiple resource management plan (“The Plan”) approved by the Grantee. The principal objectives of this Plan shall be to maintain an ecologically sustainable, productive and diverse riparian forest buffer that effectively protects soil and water quality and the natural habitats that exist within this area. Within the riparian buffer, the first 100 feet (as measured from the edge of the streambank) from _____ Creek (*or* River) shall remain in a largely natural, undisturbed condition free of all logging activity. Beyond this zone, timber harvesting may be permitted provided that it promotes the development of a forest stand of native plant species and species composition that is likely to occur on the site as a result of natural biological and physiological processes. Tree removal may be allowed to control insect and disease infestations, to prevent personal injury and property damage, to remove or reduce the spread of invasive species, to promote regeneration of native tree species, to improve wildlife habitat, and to utilize dead, dying and fallen timber for domestic consumption as firewood or use in the construction of permitted improvements and fences on the Property. During all harvesting activity, Best Management Practices, as defined by the Department of Forestry, shall be used to control erosion and protect water quality. The Grantor shall notify the Grantee 30 days before the anticipated start of any harvesting activity and 7 days prior to the anticipated completion of such harvesting activity.

WORKING FORESTS

Conservation Purpose Language

WHEREAS, the purpose of this Easement is to protect or assure in perpetuity that sustainable forest management practices will run with the Property for the purposes of continuous supplies of forest products and environmental services such as clean air, water, wildlife habitat, and potential resource land base for educational, scientific, and private recreational activities that retains and enhances quality habitat and biodiversity; and

WHEREAS, the Grantor shall maintain with the Grantee a Forest Stewardship Plan or multiple resource forest management plan (the Plan) and the primary objective(s) of the Plan shall include maintaining an ecologically sustainable, productive and diverse forestland that effectively protects soil and water quality during all management activities; and

Protective Language

1. **FOREST MANAGEMENT:** All forestry activities shall be guided by the Plan. The Plan will be prepared by a professional forester and approved by the Grantee, to assure the purposes of the Easement as set forth above and be carried out so as to preserve the environmental qualities of the Property. The Plan will be created or reviewed and updated at the commencement of this easement to incorporate the protective language in this Section and then updated every five to ten years thereafter.
2. **SILVICULTURE:** The Grantor shall use the services of a professional forester to assure that appropriate forestry management practices are executed on the site.
3. **WATER QUALITY:** Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material forestry activity is undertaken. The Grantor shall notify the Grantee no later than 30 days prior to the start of any material forest activity as well as within 7 days of its completion.
4. **HARVESTING:** A pre-harvest plan consistent with the Plan shall be submitted to the Grantee for approval 30 days before beginning any material timber harvest. The pre-harvest plan will include at least the following: description of the type of harvest to be conducted and the class(es) of trees to be removed, map and description of the best management practices to be implemented in sufficient detail to ensure that water and soil quality will be protected, and a description of the method of forest regeneration that addresses the conservation purpose of this easement.

5. FOREST REGENERATION/AFFORESTATION: Native species shall be utilized where sites are appropriate and native species are consistent with the Grantors objectives. Site preparation methods shall use the least-intensive means necessary to ensure successful establishment of desired species.

6. PROTECTION: Grantor will observe all applicable laws and regulations related to forests including threatened and endangered species laws, forest fire laws, and pesticide use. Grantor shall incorporate adequate fire protection measures to prevent forest fires and maintain adequate access to the property to provide for management and forest fire protection. Boundary line marking shall be maintained to provide easy identification and reduced timber trespass. The Plan shall include recommendations to remove or prevent establishment of invasive species on the property and to prevent or reduce the impact on the forest caused by diseases or insects.

SAMPLE LANGUAGE FOR HISTORIC RESOURCES

GENERAL

Conservation Purpose Language

WHEREAS, Chapter 22, Title 10.1 of the Code of Virginia of 1950, as amended, was enacted to support the preservation and protection of the Commonwealth of Virginia's significant historic, architectural, archaeological, and cultural resources, and charges the Board of Historic Resources to designate as historic landmarks to be listed in the Virginia Landmarks Register such buildings, structures, districts, and sites which it determines to have local, statewide, or national significance, and to receive properties and easements in gross or other interests in properties for the purpose of, among other things, the preservation and protection of such designated landmarks; and

WHEREAS, Chapter 17, Title 10.1 of the Code of Virginia of 1950, as amended, entitled "Open-Space Land Act," was enacted to preserve open-space lands for historic or scenic purposes, and authorizes any public body to receive easements in gross or other interests in properties for the purpose of preserving such historic or scenic open-space lands; and

FOR RURAL PROPERTIES

Conservation Purpose Language

WHEREAS, the Grantor is the owner in fee simple of a property known as [LANDMARK] consisting of a tract of land containing ___ acres, more or less, as more particularly described on Attachment __ attached hereto, which land includes a [*manor house or other building type*] that is of historic and architectural significance; which together with its surrounding acreage has historic, scenic, and open-space value, and is listed on the Virginia Landmarks Register and the National Register of Historic Places; and

– or –

WHEREAS, the Grantor is the owner in fee simple of a property consisting of a tract of land more particularly described in Attachment A attached hereto, which includes a [*manor house or other building type*] known as [LANDMARK], which is a contributing resource in the _____ Historic District, which district has historic, scenic, and open-space value and is individually listed in the Virginia Landmarks Register and the National Register of Historic Places;

WHEREAS, Grantor agrees that the public purpose of this Easement requires that the Property be opened for access to the general public at least one day each year;

Protective Language

1. **Permitted Buildings:** No building or structure shall be built or maintained on the Easement Property other than (i) the manor house, (ii) the following historic outbuildings and structures: *[specify]* (iii) other buildings or structures commonly or appropriately incidental to a rural single-family residence, including but not limited to a garage, garden structures, guest house, and servant quarters, (iv) farm buildings and structures, and (v) reconstructions of historic outbuildings or structures which are documented through professional historical or archaeological investigation to have been located on the Easement Property.
2. **Exterior Alterations and New Construction:** The manor house *[or other resource type; add historic outbuildings]* shall not be demolished or removed from the Easement Property, nor shall it *[they]* be materially altered, restored, renovated, or extended, except in a way that would, in the opinion of the Grantee, be in keeping with the historic character of the Easement Property, and provided that the prior written approval of the Grantee to such actions shall have been obtained. No other building or structure shall be constructed, altered, restored, renovated, extended, or demolished except in a way that would, in the opinion of the Grantee, be in keeping with the historic, architectural, and scenic character of the Easement Property, and provided that the prior written approval of the Grantee to such actions shall have been obtained. The location and design of any new building or structure is expressly made subject to the prior written approval of the Grantee.
3. **Destruction:** In the event that the manor house or any other building or structure named in Paragraph 2 above is destroyed or damaged by causes beyond the Grantor's reasonable control including fire, flood, storm, earth movement, or other acts of God, to such an extent that in the opinion of the Grantee the building's historic integrity is irretrievably compromised, nothing herein shall obligate the Grantor to reconstruct the building or return it to its condition prior to such calamity.
4. **Masonry:** No cleaning, repointing, waterproofing, or painting of the exterior masonry of the manor house *[add historic outbuildings]* shall be undertaken unless the prior written approval of the Grantee shall have been obtained. *[This provision will not be inserted if the manor house does not have noteworthy masonry.]*
5. **Interiors:** The character-defining historic interior architectural elements of the manor house, including mantels, windows, window frames, doors, door frames, stairs, staircases, baseboards, cornices, chair rails, floorboards, wainscoting, and hardware *[add or delete interior features as appropriate]* shall not be altered or removed from the Easement Property without the prior written approval of the Grantee.
6. **Archaeology:** Archaeologically significant deposits, sites, or features on the Easement Property shall not be intentionally disturbed or excavated except by or under the supervision of a

professionally qualified archaeologist and provided plans for such archaeological activity have been submitted to, and approved by the Grantee prior to any ground-disturbing activities. *[Known archaeological deposits, sites, or features may be specified.]* Artifacts and objects of antiquity professionally excavated from archaeological deposits, sites, or features on the Easement Property shall be treated and preserved according to the Department of Historic Resources **State Curation Standards (March 24, 1998)**. The Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Easement Property from looting, vandalism, erosion, mutilation, or destruction from any cause.

– or –

7. **Archaeology:** Hereafter, except for changes authorized by the Grantee under the terms of this Deed of Easement, the Grantor shall maintain the Easement Property in its documented state, and shall take all reasonable precautions to protect the archaeological site from looting, vandalism, erosion, mutilation, or destruction from any cause.

FOR URBAN PROPERTIES

Conservation Purpose Language

WHEREAS, the Grantor is the owner in fee simple of a property consisting of a tract of land more particularly described in Attachment ___ attached hereto, which includes a *[house or other building type]* known as [LANDMARK], which is individually listed in the Virginia Landmarks Register and the National Register of Historic Places;

– or –

WHEREAS, the Grantor is the owner in fee simple of a property consisting of a tract of land, more particularly described in Attachment ___ attached hereto, which includes a *[house or other building type]* known as [LANDMARK], which is a contributing structure in the _____ Historic District, which district is of historic and architectural significance and is listed in the Virginia Landmarks Register and the National Register of Historic Places; and

Protective Language

1. **Alterations:** The *[house or other building type]* shall not be demolished or removed from the Easement Property, nor shall it be altered, restored, renovated, or extended, except in a way that would, in the opinion of the Grantee, be in keeping with the historic character of the Easement Property, and provided that the prior written approval of the Grantee to such actions shall have been obtained. The preceding condition shall apply to interior and exterior changes. No other building or structure shall be constructed, altered, restored, renovated, or extended, except in a way that would, in the opinion of the Grantee, be in keeping with the historic character of the Easement Property, and provided that the prior written approval of the Grantee to such actions

shall have been obtained. The location and design of any new building or structure is expressly made subject to the prior written approval of the Grantee.

2. **Destruction:** In the event that the [house] or any other building or structure named in Paragraph 2 above is destroyed or damaged by causes beyond the Grantor's reasonable control including fire, flood, storm, earth movement, or other acts of God, to such an extent that in the opinion of the Grantee the house's historic integrity is irremediably compromised, nothing herein shall obligate the Grantor to reconstruct the building or structure or return it to its condition prior to such calamity.
3. **Masonry:** No cleaning, repointing, waterproofing, or painting of the exterior masonry of the [house] *[add historic outbuildings as applicable]* shall be undertaken unless the prior written approval of the Grantee shall have been obtained. *[This provision will not be inserted if the house does not have noteworthy masonry.]*
4. **Interiors:** The historic character-defining architectural elements of the interior of the [house], including mantels, windows, window frames, doors, door frames, stairs, staircases, cornices, baseboards, chair rails, floorboards, wainscoting, and hardware *[add or delete specific interior features as appropriate]*, shall not be permanently altered or removed from the Easement Property without the prior written approval of the Grantee.
5. **Archaeology:** Archaeologically significant deposits, sites, or features on the Easement Property shall not be intentionally disturbed or excavated except by or under the supervision of a professionally qualified archaeologist and provided plans for such archaeological activity have been submitted to, and approved by the Grantee prior to any ground-disturbing activities. *[Known archaeological deposits, sites, or features may be specified.]* Artifacts and objects of antiquity professionally excavated from archaeological deposits, sites, or features on the Easement Property shall be treated and preserved according to the Department of Historic Resources **State Curation Standards (March 24, 1998)**. The Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Easement Property from looting, vandalism, erosion, mutilation, or destruction from any cause.

– or –

6. **Archaeology:** Hereafter, except for changes authorized by the Grantee under the terms of this Deed of Easement, the Grantor shall maintain the Easement Property in its documented state, and shall take all reasonable precautions to protect the archaeological site from looting, vandalism, erosion, mutilation, or destruction from any cause.

For Archaeology

Conservation Purpose Language

WHEREAS, the Grantor is the owner of a tract of land consisting of ____ acres, more or less, herein described, on which is situated the archaeological site of [LANDMARK], more particularly described in Attachment ___ attached hereto; *which site, because of its archaeological significance, is listed on the Virginia Landmarks Register and the National Register of Historic Places [possible language if the site is listed on one of the Registers];* and

Protective Language

1. *Alternative A [to protect known and potential archaeological sites that are not listed on the State or National Register]:* Hereafter, except for changes authorized by the Grantee under the terms of this Deed of Easement, the Grantor shall maintain the Easement Property in its documented state, and shall take all reasonable precautions to protect the archaeological site from looting, vandalism, erosion, mutilation, or destruction from any cause.

1. *Alternative B: **Ground Disturbance.*** Archaeologically significant deposits, sites, or features on the Easement property shall not be intentionally disturbed or excavated except by or under the supervision of a professionally qualified archaeologist and provided plans for such archaeological activity have been submitted to, and approved by the Grantee prior to any ground-disturbing activities. *[Known archaeological deposits, sites, or features may be specified.]* Artifacts and objects of antiquity professionally excavated from archaeological deposits, sites, or features on the Easement Property shall be treated and preserved according to the Department of Historic Resources **State Curation Standards (March 24, 1998)**. The Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Easement Property from looting, vandalism, erosion, mutilation, or destruction from any cause.

2. **Investigation.** No field investigation, archaeological exploration, or recovery operation shall be conducted on the Easement Property without the prior written approval of the Grantee. Any such field investigations, explorations, or recovery operations conducted pursuant to such approval shall be carried out in consultation with the Grantee and in a manner to ensure that the maximum amount of historic, scientific, archaeological, and educational information may be recovered and preserved in addition to the physical recovery of objects.

3. **Artifacts.** All artifacts and objects of antiquity professionally excavated from archaeological deposits, sites, or features on the Easement Property shall be treated and preserved according to the Virginia Department of Historic Resources **State Curation Standards (March 24, 1998)**. Such artifacts and objects of antiquity may, upon mutual consent of the Grantor and the Grantee, be conserved and studied by the archaeological staff of the Grantee or its successor, and stored in the archaeological collections of the Grantee or its successor.

4. **Permitted Buildings.** No permanent building, structure, or mobile home shall be built or maintained on the Easement Property other than (i) a single-family residence and garage, to be

constructed, if necessary, for the purpose of enhancing on-site security; (ii) buildings necessary for the curation, study, and storage of artifacts recovered from the Easement Property; (iii) buildings structures, and displays appropriate for the interpretation of the history and significance of the property for visitors; and (iv) other structures necessary for the accommodation of visitors to the property. The location and design of any such permanent buildings, structures, or displays constructed on the Easement Property shall be subject to the prior written approval of the Grantee, which shall be granted only after archaeological testing of the proposed site. After execution of this Deed of Easement, no permanent building, structure, or display shall be constructed, altered, renovated, or extended on the Easement Property, unless prior written approval of the Grantee to such action shall have been obtained.

5. **Temporary Structures.** Temporary structures to accommodate archaeological activity and site protection may be constructed on the Easement Property provided that (i) no such temporary structure shall be erected on the property unless the proposed site of such structure has previously been tested for archaeological significance and approved by the Grantee; (ii) no such temporary structure shall remain on the property for longer than five years without written approval of the Grantee.

SAMPLE LANGUAGE FOR NATURAL HERITAGE RESOURCES

Conservation Purpose Language

WHEREAS, the Property possesses significant natural, scenic, scientific, open-space and Natural Heritage Resource values, the preservation of which will benefit the citizens of the Commonwealth of Virginia; and

WHEREAS, the Grantor and Co-Grantees agree that certain uses and activities on the Property would lead to or contribute to degradation of the natural, scenic, scientific, open-space and Natural Heritage Resource values of the Property; and

WHEREAS, particular portions of the Property contain Natural Heritage Resources defined in §10.1-209 of the Code of Virginia to mean “the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth” and as designated by the Division of Natural Heritage, Virginia Department of Conservation and Recreation; these resources being _____, _____, and _____;

WHEREAS, the Grantor and Grantee desire to assure the perpetual preservation of the Natural Heritage Resource values to the best of their ability by restricting certain uses of and activities on portions of the Property as hereinafter set forth.

WHEREAS, the extent of the habitat for the Natural Heritage Resources of the Property is indicated as the Natural Heritage Resource Zone on Map AA and the habitat is described in the Baseline Documentation.

WHEREAS, the objectives of management for the Natural Heritage Resource Zone focus on (1) minimizing soil disturbance to retard or prevent invasive plant introductions, (2) retention and restoration of natural hydrological regimes and nutrient cycles, and (3) taking other actions to alter or maintain habitat conditions that favor the expansion of populations of rare species of plants and animals, and significant natural communities.

Restrictive Language

Management of Natural Heritage Resource Zone

The Grantors, their successors and assigns, shall manage the Natural Heritage Resource Zone on the Property in a manner consistent with the continued preservation of the Natural Heritage Resources

on the Property, as outlined in the Natural Heritage Resource Management Plan. No activities shall be permitted within the Natural Heritage Resource Zone that would threaten the integrity of these Natural Heritage Resource values.

The use of the property within the Natural Heritage Resource Zone is restricted to those activities that are consistent with the preservation of its Natural Heritage Resources, unless otherwise specifically permitted. The principal activities in the Natural Heritage Resource Zone that are normally appropriate include conducting biological inventories and resource management actions such as monitoring, vegetation or hydrologic restoration and invasive species control to benefit Natural Heritage Resources, plus compatible and appropriate uses such as walking, observing wildlife, teaching, and research-oriented activities. Activities that are unrelated to those listed above are prohibited, except as may be provided by written approval of the Grantee.

Uses and activities within the Natural Heritage Resource Zone that are conditionally appropriate include hunting, fishing, swimming, picnicking, and canoeing. Guidance should be sought from the Grantee to determine which of these activities are appropriate for the Natural Heritage Resource Zone on the Property.

Uses and activities within the Natural Heritage Resource Zone that are generally inappropriate include camping, bicycling, off-road vehicle use, horseback riding, rock climbing, caving, and collection of plants, animals or minerals. Guidance should be sought from the Grantee to determine if any of these activities are appropriate for the Natural Heritage Resource Zone on the Property.

Sample Language for Recreational Uses

Conservation Purpose Language

WHEREAS, it is the intent of this Easement to maintain the rural, agricultural and natural scenic qualities of the area by the retention of significant open space for a variety of uses including recreation, wildlife habitat, and [other desired use]; and,

WHEREAS, it is the intent of this Easement to maintain, enhance and develop water resources on the Property in accordance with applicable state and federal regulations, for fish and wildlife uses, domestic needs, and private recreation;

WHEREAS, it is the intent of Grantor that this Easement will limit the use of the Property to such activities as are consistent with its Conservation Values, including hunting, fishing, hiking, and other recreational uses;

Protective Language

Recreational Uses. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Property, including, without limitations, hunting and fishing, that require no surface alteration or other development of the land. Motorized vehicles are prohibited on all trails and off-road terrain. Pursuit of wildlife by any form of motorized transportation is not allowed. Furthermore, Grantor shall not be allowed to conduct recreational activities that impair the conservation values of the Property, especially with regards to erosion and sedimentation issues associated with overuse or misuse of the Property's landscape. Lastly, in order to qualify this easement for treatment under Internal Revenue Code Section 2031(c)(8)(B), any use of the Property for more than a *de minimis* use for a commercial recreational activity is prohibited..

Water resources and recreation. Permitted uses include, but are not limited to, the following: the right to restore, enhance and develop water resources, including ponds; and to locate, construct, repair, and maintain a private fishing pier with Grantor's prior approval.

Public Access to Riparian Corridor. The Grantor agrees to allow public access to _____ (the "Waterway") and its banks for recreational fishing and boating, to preserve vegetative cover in a riparian buffer so as to protect water quality and riparian habitat, and to allow the holder to provide sites for fishery and habitat management, research and educational programs. The easement granted to Holder includes the rights described below in this Section.

- (i) Public Access. Subject to Access Restrictions, public use of the Riparian Corridor for recreational fishing and boating together with accessory use of any Accessory Facilities (defined below in this Section) identified for public use by the Holder. The term "Access

Restrictions” means the rules, regulations and/or limitations established by Holder to regulate fishing and boating activities.

- (ii) Management Activities. Use of the Easement Area by or under the auspices of the Holder for stocking fish, improving stream habitat, stabilizing stream banks and other educational, scientific and resource management activities in furtherance of the Conservation Purpose.
- (iii) Accessory Facilities. Installation, construction, maintenance, repair and replacement of Accessory Facilities either within the Riparian Corridor or, if outside the Riparian Corridor, in the locations identified on the Easement Plan or such other locations as are mutually agreeable to Grantor and Holder. The phrase “Accessory Facilities” means temporary or permanent structures and improvements used or usable in connection with Easement Objectives; for example, a driveway, trail, footpath, boardwalk or other access way connecting the Riparian Corridor with the public right-of-way; parking area; dock, boat launch, structures that enhance fishing opportunities or fish habitat, and signage to mark the Easement Area and provide information regarding applicable time, place and manner restrictions.
- (iv) Access. Reasonable means of access (both vehicular and pedestrian) to and from the public right-of-way for the purposes described in (b) and (c) above. As to the public use described in (a) above, access to the Riparian Corridor is via the Waterway unless and to the extent (i) the Riparian Corridor is accessible directly from the public right-of-way; or (ii) a footpath, trail or drive providing access to the Riparian Corridor has been identified by Holder on the Easement Plan for public use purposes.

Charge. No charge or fee is permitted for access to the Easement Area for fishing, boating and other water-related activities or uses or for use of any Accessory Facilities.

Grantor’s Enforcement Rights in Riparian Corridor. Grantor reserves the right to take any action permitted under law to remove from the Property persons entering the Easement Area for purposes other than set forth in the grant of public access under this Article.

Sample Language for Water Resources Protection

CONSERVATION PURPOSE LANGUAGE

WHEREAS, the Property contains significant water resources, including forested and vegetated riparian land along _____ Creek;

WHEREAS, the Property provides important natural land within the local watershed, and its preservation contributes to the quality and quantity of surface runoff to the _____ watershed. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water recharge resources for the local area;

WHEREAS, Grantor and Grantee recognize that the Property's scenic open space values are enhanced by the fact that the wetlands portions of the Property have not been significantly disturbed by human activities;

WHEREAS, the Property provides vital corridor wetlands and upland wildlife habitats which serve as a connection for wildlife movement and create a natural "greenway;"

WHEREAS, the Property contains significant natural habitat in which wetlands, wildlife, plants, trees, and the ecosystems which support them, thrive in a natural state,

WHEREAS, the Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation,

WHEREAS, the conservation of the Property is pursuant to clearly delineated local [and/or state] conservation policy and yields a significant public benefit. The following legislation, among others, establishes relevant state public policy:

- *Citation of State Code when found*

RESTRICTIVE LANGUAGE

Riparian Buffer Area. In order to protect the ecological integrity and water quality of the water resources, Grantors agree to maintain a forested, vegetated Riparian Buffer which shall contain the land extending 100 feet [*or negotiated width*] feet from the bank of _____ [*waterbody*], and from all other permanent and intermittent streams, wetlands, mudflats, and water bodies on or adjacent to the Property, including manmade ditches and ponds, as measured from the edge of the stream or feature under normal conditions (mean high water in tidal environments); and additional designated areas of the Property with special conservation significance. The extent and location of

Buffer Areas are shown on Map ___ in Exhibit ___ and are described and depicted graphically in the Baseline Report.

In the Riparian Buffer there shall be no construction or placement of structures or disturbance of vegetation except as may be necessary for: (1) streambank restoration, riparian restoration or maintenance of existing restored riparian buffer, cattle fencing, or erosion control; (2) cutting and removal of dead, disease infested or invasive species or to remove trees blocking the flow of water; (3) to allow for reasonable crossing to access the remainder of the Property. The Riparian Buffer shall be protected from degradation by livestock.

The Riparian Buffer shall be preserved in perpetuity in its natural state. Construction of buildings is prohibited; however, by way of example and not limitations, structures such as boardwalks, foot trails, wildlife management structures, observation decks, and picnic tables may be constructed with the advance written consent of, and according to designs approved by, the Grantor and Grantee, which consent shall not be unreasonably withheld.

In order to maintain the ecological values of the Riparian Forest Buffer, indigenous vegetation shall be maintained [*option*: “preserved, or allowed to develop by natural succession where it does not exist”] to the maximum extent possible. The target vegetative cover in said buffer shall consist of an indigenous riparian forest community composed of herbaceous, shrub, and tree canopy layers expected on such sites.

The Grantor may remove vegetation to control insect and disease infestations, to prevent personal injury and property damage, and to control the spread of invasive exotic species. Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where streambank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem. Before removing vegetation, the Grantor shall confer with Grantee to agree on the extent and method of vegetation removal.

Neither Grantor nor Grantor’s successors shall deposit or allow to accumulate any trash or refuse in the Riparian Buffer. It is understood that poor management practices in the rest of the watershed inevitably results in the deposit of trash in the riparian zone by floodwaters, and the Grantor shall be under no affirmative obligation to continually remove such debris.

Other than as shown on the referenced plat, there shall be no vehicular crossing of the Riparian Buffer. No livestock or other crossing shall be constructed across the Riparian Buffer without the prior approval of Grantee as to location, design and construction, and such crossing shall be maintained according to standards established by Grantee.

Water Use. Grantor retains the right to use, maintain, and improve water sources, water courses, and water bodies on the Property so long as that activity does not impair the water quality in violation of applicable Virginia water quality standards or alter the natural course or flow volume of water over or through the Property, provided that alteration of the natural flow of water over the Property is permitted in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural potential of the Property, if such alteration is consistent with the Conservation Plan. Any exercise of this retained right must be done in a manner consistent with the conservation purposes of this Conservation Easement, including the protection of prime and unique soils and the protection of floodplains and jurisdictional wetlands.

Water Courses, Ground Water. Natural water courses, wetlands, or other bodies of water may not be altered. In addition, water from ground or surface sources may not be diverted. Measures necessary for erosion control may be taken provided that the proposed actions have been properly reviewed and authorized by Grantee for appropriateness, and so long as the actions taken are supervised by Grantee to minimize damage to the Property.

Ponds. Any ponds constructed shall be for agricultural or small-scale recreational purposes only, shall not exceed two acres in size, and shall be located in areas so that disturbance to prime, unique, and important soils is minimized.

Shoreline Stabilization. There shall be no hardening of shorelines, including but not limited to jetties, groins, bulkheads, etc. If such features exist as of the date of this Conservation Easement and are detailed in the Baseline Report as such, Grantor shall have the right to maintain or repair these features, but may not enlarge them. In addition, beaches shall not be supplemented with sand. Grantor must allow beaches to undergo a natural process of sediment erosion and accretion.

Prohibited Actions. Any activity on, or use of, the Property which is inconsistent with or detrimental to the Purposes of this Conservation Easement is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are expressly prohibited:

Ecological Restoration Activities. If Grantee reasonably determines that such activities are consistent with the purposes of this Easement, Grantee may, subject in any event to Grantor's prior written consent, not to be unreasonably withheld, engage, and permit others to engage, in restoration activities, pertaining to, without limitation, wetlands, stream banks, riparian areas, invasive plant infestations, or fire regime. Prior to commencement of any restoration activities, Grantee shall have the plans and specifications for such restoration approved by, and shall obtain all permits necessary for engaging in such activities from, all local, state and federal authorities with jurisdiction over such activities.

Sample Language for Wildlife Habitat Protection

Conservation Purpose Language

WHEREAS, the fragmentation and loss of natural wildlife habitat due to human activity has affected many regions of the Commonwealth, fracturing wilderness systems and wildlife corridors, causing the decline of many native species, and impeding the natural function of natural communities and ecosystems; and

WHEREAS, land conservation can serve to prevent further fragmentation and habitat loss, to restore ecological integrity, to protect scenic, cultural and historic values, and to provide opportunities for passive recreation; and

WHEREAS, the Property provides vital corridor wetlands and upland wildlife habitats which serve as a connection for wildlife movement and create a natural “greenway;”

WHEREAS, the Property contains significant natural habitat in which wildlife, plants, trees, and the ecosystems which support them, thrive in a natural state,

WHEREAS, Grantor intends that the Property be managed to enhance wildlife habitat; and

WHEREAS, the extent of wildlife habitat on the Property is indicated as the Wildlife Resource Zone on Map AA and the habitat is described in the Baseline Documentation;

Protective Language

Mowing and Pruning. Grantor agrees not to mow pasture grass, prune seedling trees, or otherwise remove brush or undergrowth in the Wildlife Resource Zone during the Nesting Season, *i.e.*, the period from April 15 to August 15, of the current year and each year hereafter. In the event such mowing or pruning is done during the period from August 16 to April 14, such work shall be performed in the least obtrusive manner.

Migratory Bird Habitat. The forest understory in all wooded areas of the Property, which is essential habitat for migratory bird species, shall not be removed except as necessary for uses permitted in paragraph __ below.

Clearings for Wildlife. Clear-cutting of all wooded areas of the Property shall be limited to no more than three (3) wildlife habitat clearings no greater than five acres each.

Sample Text for Fisheries management

Public Access to Riparian Corridor. The Grantor agrees to allow public access to _____ (the “Waterway”) and its banks for recreational fishing and boating, to preserve vegetative cover in a riparian buffer so as to protect water quality and riparian habitat, and to allow the holder to provide sites for fishery and habitat management, research and educational programs. The easement granted to Holder includes the rights described below in this Section.

- a. Public Access. Subject to Access Restrictions, public use of the Riparian Corridor for recreational fishing and boating together with accessory use of any Accessory Facilities (defined below in this Section) identified for public use by the Holder. The term “Access Restrictions” means the rules, regulations and/or limitations established by Holder to regulate fishing and boating activities.
- b. Management Activities. Use of the Easement Area by or under the auspices of the Holder for stocking fish, improving stream habitat, stabilizing stream banks and other educational, scientific and resource management activities in furtherance of the Conservation Purpose.
- c. Accessory Facilities. Installation, construction, maintenance, repair and replacement of Accessory Facilities either within the Riparian Corridor or, if outside the Riparian Corridor, in the locations identified on the Easement Plan or such other locations as are mutually agreeable to Grantor and Holder. The phrase “Accessory Facilities” means temporary or permanent structures and improvements used or usable in connection with Easement Objectives; for example, a driveway, trail, footpath, boardwalk or other access way connecting the Riparian Corridor with the public right-of-way; parking area; dock, boat launch, structures that enhance fishing opportunities or fish habitat, and signage to mark the Easement Area and provide information regarding applicable time, place and manner restrictions.
- d. Access. Reasonable means of access (both vehicular and pedestrian) to and from the public right-of-way for the purposes described in (b) and (c) above. As to the public use described in (a) above, access to the Riparian Corridor is via the Waterway unless and to the extent (i) the Riparian Corridor is accessible directly from the public right-of-way; or (ii) a footpath, trail or drive providing access to the Riparian Corridor has been identified by Holder on the Easement Plan for public use purposes.

Activities Prohibited in the Riparian Corridor. Grantor’s reserved rights to use the Easement Area are subject to the following limitations unless specifically listed as a “Permitted Use” or Holder (without any obligation to do so) notifies Grantor of its approval:

- a. Alterations to Waterway. No removal, impoundment or diversion of water from the Waterway or other change of natural flow of the Waterway is permitted.

- b. Alterations to Riparian Corridor. No change in topography or removal or disturbance of soil, rock or vegetative resources that, individually or in the aggregate, results in the impairment of Easement Objectives is permitted within the Riparian Corridor; however, Grantor may cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to persons or property on or about the Easement Area. By exercising such right Grantor does not assume any responsibility to inspect the Easement Area or otherwise take responsibility for the safety of any persons entering the Easement Area.
- c. Improvements. No permanent structures or improvements are permitted within the Easement Area other than improvements existing on the Agreement Date in their existing locations as shown on the Easement Plan.
- d. Agricultural Use. No pasturing, grazing or other agricultural use, or forestry use, of the Riparian Corridor is permitted. Any such uses within other portions of the Easement Area are conducted at Grantor's risk; i.e., Holder is not responsible for loss or damage to crops or livestock occasioned by exercise of its rights under this Agreement.
- e. Waste Disposal. No dumping or placement of ashes, trash, garbage, sewage, manure or other offensive material is permitted within the Easement Area.
- f. Charge. No charge or fee is permitted for access to the Easement Area for fishing, boating and other water-related activities or uses or for use of any Accessory Facilities.

Grantor's Enforcement Rights in Riparian Corridor. Grantor reserves the right to take any action permitted under law to remove from the Property persons entering the Easement Area for purposes other than set forth in the grant of public access under this Article.